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ABSTRACT

Contemporary scholars researching the courts' impact on schools would profit from examining the well-funded studies conducted in the 1960s and early 1970s. This article discusses the substance of early judicial impact research and explores its relevance for today. Most 1960s impact studies dealt with United States Supreme Court decisions in three areas of which two involved education: school prayer and school desegregation. Early impact research posited the simple, testable proposition that Supreme Court decisions in these two controversial areas might be ignored or evaded. Numerous variables were found to affect short-term compliance. Since school personnel evinced incomplete understanding of court decision requirements, local compliance was promoted by the activities of third-party groups like civil liberties associations. Some school administrators decided to avoid behavior changes until directed by school boards or threatened by lawsuits. Resistance and acceptance were also related to geographic region. This article lists a dozen findings that could be used as hypotheses for contemporary researchers. Two important variables needing further study are administrators' personal attitudes and community elites' roles. Community case studies are also needed. Early impact research offers both a useful source of testable propositions and an excellent proving ground for research methodologies. Specific research emphases are briefly discussed and a plea is made for a return to indepth field methodologies. Appended are 22 references. (MLH)

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RESEARCH EXCHANGE

Legal Impact Studies: Golden Oldies and Today's Research

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The "Research Exchange" articles, prepared under the direction of Perry Zirkel, have helped scholars conceptualize a research agenda for those involved in empirical research on the impact of courts on schools. Starting in 1985,[1] this series has suggested topics about judicial impact that have been or should be examined by researchers. The findings from such research, in turn, serve to structure the broader debate about the appropriate role of the courts in overseeing the operation of educational systems.

In this column, I will suggest that contemporary researchers would be well advised to look back at the impact research conducted in the 1960's and early 1970's. This period can be regarded with some envy by contemporary researchers because significant resources from public and private sources made possible extensive studies of judicial impact. These studies remain useful today, both for the research hypotheses they generated and for the methodologies they employed. In the paragraphs that follow, I first will focus on the substance of this research and then suggest ways in which it is relevant today.

Early Impact Research

There was an explosion of behavioral research on the courts in the 1960's as political scientists began using a variety of research methods to look at judicial behavior and at the impact of court decisions. Most of these early impact studies focused on Supreme Court decisions in three areas. Two of the areas involved education: school prayer and school desegregation. The third area considered the rights of criminal defendants, studying *Miranda v. Arizona*[2] and other defendant's rights decisions and the impact of these cases on the behavior of police and prosecutors.[3]

This impact research began with the simple, testable proposition that Supreme Court decisions in these controversial areas might be ignored or evaded. As is often the case with new lines of research, things became much more complicated, social scientists discovered that there were shades of compliance or noncompliance and that many individuals whose behavior was expected to change, such as police officers or principals, had no idea what the Supreme Court actually had said about the matter at hand.

Early impact research quickly determined that numerous variables, such as the nature of the decision and the parties at whom it was directed, affected short-term compliance.[4] Similar to the findings from recent knowledge surveys of school personnel about court decisions, the earlier studies found that school personnel had an incomplete understanding of what was required by education decisions of the 1960's[5] and by other Supreme Court decisions, more generally.[6] Compliance with decisions, especially in the short run, was found to depend in large measure on the activities of third-party groups, such as civil liberties associations, which worked to see that distant court decisions were complied with locally.[7] Such groups also provided a key role in transmitting information about the content of decisions, as few individuals read Supreme Court decisions and fewer still are presumed to understand their local relevance. It was in some of these studies, then, that the role of intermediaries in shaping local responses to decisions was first examined.

Researchers found that some school administrators who understood the content of education decisions decided to avoid changing behavior until told to do so by school boards or until threatened with lawsuits. Others, however, moved to comply shortly after a Supreme Court ruling. Resistance to or acceptance of the early school prayer decisions, for example, was found to be related to geographic region. Dolbeare and Hammond surveyed elementary school teachers and found that, before 1962, 93% of the teachers in the East used morning prayers and 87% used them in the South. Two years after *Engel v. Vitale*, the figure had fallen to 11% in the East but only to 64% in the South.[8] Resistance or compliance also was found to be related to what neighboring school districts did and to individual administrators' respect for the Court as an institution. Researchers hypothesized that resistance to Supreme Court prayer decisions in the South, then, was related to a lower level of respect for the Court and to a pattern of resistance seen in desegregation cases.

Two key variables were found to be helpful in predicting local response to the school prayer decisions in the districts actually involved in the litigation. The per-

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sonal attitudes of school administrators and the role of community elites determined the response. Frank Sorauf, after studying all 67 cases involving church-state separation decided between 1951 and 1971 in federal and state high courts, found that personal attitudes were the key factor in determining compliance once a school district lost a court decision.[9] Community elites, such as school board members, also played a part in determining whether a school district would comply in places where a school district was not a direct party to the litigation.[10]

Early Findings as Contemporary Hypotheses

The early impact studies, taken as a group, provide a number of findings useful for contemporary researchers. Some of these findings, which could be hypotheses for further study, are the following:

1. Subsequent decisions by lower courts interpret Supreme Court findings and determine the direction of local compliance.[11]
2. Decisions requiring changed behavior in large bureaucracies, such as school systems or police departments, require active support from administrators if compliance is to occur.[12]
3. Compliance is easiest to obtain if changed behavior is required of only a few actors in a bureaucracy.
4. State and local school boards and community political elites help determine which court rulings will be followed.
5. Local response to a Supreme Court ruling is more likely if a local group demands its implementation.[13]
6. Intermediary organizations, such as national teacher unions, associations of school boards, administrators and legal groups, transmit the content of court decisions.[14]
7. Information about court decisions often is garbled and confused when it is absorbed at the local level, especially when the message is received by those not having a direct responsibility to comply.[15]
8. The behavior of individuals in large, bureaucratic organizations may change as the result of misperceptions of legals requirements.[16]
9. Positive attitudes about the Supreme Court, or courts in general, increase the likelihood of individual compliance while negative attitudes more likely result in resistance.[17]
10. Individuals are personally more likely to comply with decisions with which they agree.
11. Administrators in large organizations may use the court decisions as the justification for establishing new policies or procedures actually unrelated to the decision.[18]
12. Social groups may use a court decision in one area to push for changes in other unrelated areas (e.g., the generally unsuccessful attempt to link desegregation and the disciplinary suspension of minority students).[19]

Compared to recent education research on the law that has focused on legal knowledge, employing true-false quizzes about the content of court rulings, or mail surveys about perceived court impact, many of these early impact studies had a methodological richness that far surpasses current efforts. Substantial funding was also found, making possible surveys combined with on-site data acquisition and observations. There was a willingness, as well, to gather data through in-depth case studies in a single location.

Conclusion and Recommendation

While the earlier court decision impact research should be viewed as a useful source of testable propositions, I think its greatest contribution lies in its role as a proving ground for research methodologies. As computerized data analysis techniques become ever more sophisticated and computer facilities more widespread, the temptation to research legal impact topics using survey data increases. This trend leads researchers away from in-depth studies and field-generated research findings toward forced-choice survey responses from broad samples. While mail surveys can be very useful,[20] it is impossible to reduce all we want to know about legal impact into this format.

At this point, the court impact literature would benefit from a *community case study* examining education litigation and its impact within a single school system. Using a methodology similar to the early research, I would suggest a project that combined survey instruments, interviews and observations. There are a number of specific topics the research should cover.

First, we need to know the *contours of litigation* within the district, looking at cases filed over time, sorted into categories, such as injury-based tort cases, employment cases, and handicapped student cases. In addition to cases fully litigated, we need a sense of the number and type of case settled informally. Lawyers sometimes bargain on behalf of parents and employees,[21] so it would be helpful to assess the wide range of contacts between school personnel and attorneys. We also need to know more about the relationship between school administrators and their own attorneys.[22]

The impact of litigation or threats of litigation is harder to measure but runs to the heart of the debate about the appropriate role of the legal system in contemporary education. The earlier literature suggests a variety of impact categories. *Cost* can be measured both in dollars and in lost time and other resources. Changed *policies and practices* are more elusive, especially the latter, and are open to subjective interpretation. Nevertheless, the research reviewed earlier faced and surmounted this methodological problem through the use of observational and interview techniques. *Attitudes* regarding the judicial system also are a key, as seen in the previous research. These could be assessed through surveys and compared with changing practices of individual teachers or administrators.

In short, we need to take the debate about the impact of courts on schools back to the individual school level. We need to build on previous research, render a number of assumptions about court impact into testable hypotheses and return to in-depth field research to answer contemporary questions.

NOTES

1. Zirkel, *Educational Research Relating to School Law*, 20 NOLPE Notes 1 (1985).

2. 384 U.S. 436 (1966).

3. *See* N. Milner, The Court and Local Law Enforcement: The Impact of Miranda (Sage ed. 1971) and S. Wasby, Small Town Police and the Supreme Court (1976).

4. S. Wasby, The Impact of the United States Supreme Court (1970); *see generally*, The Impact of Supreme Court Decisions (T. Becker & M. Feeley, eds. 1973).

5. Engel v. Vitale, 370 U.S. 421 (1962) (school prayer); Abington School District v. Schempp, 374 U.S. 203 (1963) (Bible verses read at the beginning of the school day).

6. *See generally*, K. Dolbeare, *The Public Views the Supreme Court*, Law, Politics, and the Federal Courts (H. Jacob, ed. 1967); Barth, *Perception and Acceptance of Supreme Court Decisions at the State and Local Levels*, 17 J. Pub. L. 308 (1968).

7. S. Scheingold, The Politics of Rights (1974).

8. K. Dolbeare and P. Hammond, The School Prayer Decisions: From Court Policy to Local Practice (1971), at 32.

9. F. Sorauf, The Wall of Separation (1976).

10. H. Rodgers, Jr. & C. Bullock III, Coercion to Compliance (1976).

11. Murphy, *Lower Court Checks on Supreme Court Power*, 53 Am. Pol. Sci. Rev. 2 (1959).

12. Reich, *Schoolhouse Religion and the Supreme Court: A Report on Attitudes of Teachers and Principals on School Practices in Wisconsin and Ohio*, 23 J.L. Educ. 123 (1971).

13. Johnson, The Dynamics of Compliance (1967).

14. Wasby, *The Communication of the Supreme Court's Criminal Procedure Decisions: A Preliminary Mapping*, 18 Vill. L. Rev. 1086 (1973).

15. *Public Opinion and the United States Supreme Court*, Frontiers of Judicial Research (J. Grossman & J. Tanenhaus, eds. 1960).

16. First reported in the literature on police behavior following *Miranda*, this was examined in an educational context by H. Lufler, Jr., *Unintended Impact of Supreme Court School Discipline Decisions*, Contemporary Legal Issues in Education, (Marion A. McGhehey, ed. 1979).

17. W. Muir, Jr., Prayer in the Public Schools, Law and Attitude Change (1967).

18. Cuban, *Hobson v. Hansen: A Study in Organizational Response*, 2 Educ. Ad. Q. 15 (1975).

19. Argued more recently by Bennett, *The Impact of Court Ordered Desegregation: A Defendant's View*, Schools and the Courts (ERIC Clearinghouse Educ. Mgmt. 1979).

20. *See, e.g.*, the national survey of principals reported in Center for Statistics, OERI, U.S. Department of Education (CS86-226b), *School Discipline Policies and Practices*.

21. On the use of attorneys, *see* Clark, *Adjudication to Administration: A Statistical Analysis of Federal District Courts in the Twentieth Century*, 55 S. Cal. L. Rev. 65, 94 (1981), Galanter, *Reading the Landscape of Disputes: What We Know and Don't Know (And Think We Know) About Our Allegedly Contentious and Litigious Society*, 31 UCLA L. Rev. 4, 62 (1983).

22. *See* Rapp, *Education, Law and the Attorney*, School Safety Legal Anthology (1985).

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